No. 02-241

FEB 19 2003

IN THE

Supreme Court of the United States

BARBARA GRUTTER,

Petitioner,

v.

LEE BOLLINGER, *et al.*,

Respondents.

ON WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF OF THE UNIVERSITY OF MICHIGAN ASIAN PACIFIC AMERICAN LAW STUDENTS ASSOCIATION, THE UNIVERSITY OF MICHIGAN BLACK LAW STUDENTS' ALLIANCE, THE UNIVERSITY OF MICHIGAN LATINO LAW STUDENTS ASSOCIATION, AND THE UNIVERSITY OF MICHIGAN NATIVE AMERICAN LAW STUDENTS ASSOCIATION AS AMICI CURIAE IN SUPPORT OF RESPONDENTS

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INTEREST OF AMICI CURIAE

The Black Law Students' Alliance ("BLSA"), Latino Law Students Association ("LLSA"), Native American Law Students Association ("NALSA") and Asian Pacific American Law Students Association ("APALSA") chapters at the University of Michigan Law School ("Michigan Law School" or the "Law School") submit this brief as *amici curiae* (the "*Amici*") in support of Respondents Lee Bollinger, Jeffrey Lehman, Dennis Shields, the Board of Regents of the University of Michigan, et al.[1] The four groups submitting this brief comprise and represent the Law School's organized students of color.

The following student organizations at Michigan Law School, which represent a wide cross-section of the entire student body, have voted formally to endorse the arguments set forth herein: the Michigan Law School Student Senate, Muslim Law Students Association, Women Law Students Association, Volunteer Students Tutoring Association, National Lawyers Guild, American Civil Liberties Union, Law Students for Reproductive Choice, Public Interest Group, Environmental Law Society, Outlaws (Gay, Lesbian, Bisexual and Transgendered Students), Journal of Race and Law, Journal of Gender and Law Coordinators Board, and Student Network for Asylum and Refugee Law Project.

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1. Counsel for the *Amici* were the sole authors of this brief. No person or entity other than the *Amici* made a financial contribution to this brief. Some members of the *Amici* are also intervenor defendants in this action. Pursuant to Rules 37.2(2)(a) and (3)(a) of the Supreme Court, all parties have consented to the filing of this brief. These consents were filed with this Court in December 2002.

Should this Court rule that Michigan Law School cannot take race into consideration in admissions, or otherwise restrict the Law School's flexibility in determining the admissions policy most likely to achieve its educational goals, the Law School community will no longer enjoy many of the significant contributions of the members of the four groups filing this brief. To better illustrate what Michigan Law School will lose if this Court strikes down the current diversity policy, we provide the following descriptions of our organizations.

BLSA articulates, defends and facilitates the shared goals and interests of Michigan Law School's African-American community and reflects a wide range of ideological and cultural perspectives and socioeconomic classes. BLSA's members come from rural towns, the nation's urban centers and foreign countries. BLSA has developed programs that enhance the academic achievement of its members and facilitate job and clerkship placement. Members of BLSA serve on each of Michigan Law School's six journals. Sponsoring events such as the annual Butch Carpenter Scholarship Banquet, BLSA invites the entire Michigan Law School community to celebrate our African-American heritage and the achievements of our first-year members. The Honorable Harry T. Edwards, the Honorable Roger L. Gregory and Congressman Harold E. Ford, Jr. are among the many prominent alumni who have delivered keynote addresses at Michigan Law School.

LLSA promotes the progress of Latino law students and the larger Latino community. In celebration of Latino scholastic achievement and commitment to issues that affect the Latino community, LLSA hosts the annual Juan Tienda Scholarship Banquet, which is attended by a broad spectrum

of the Michigan Law School community. Former keynote speakers include the Honorable Mary Murguia, Colorado State Attorney General Ken Salazar and renowned legal scholar Richard Delgado. To ensure the Latino community's continued vitality at Michigan Law School, LLSA works with the administration to recruit Latino students and law professors. LLSA also interacts with the larger Latino community at the university through mentorship programs and informational fora regarding current legal issues. Overall, LLSA works to commemorate and share its culture within the Michigan Law School community and disprove stereotypes of Latino culture both within and beyond the Law School environment.

NALSA's membership includes members of federally and non-federally recognized tribes, individuals of Native American descent and non-Native Americans.[2] NALSA promotes awareness of two substantive areas of law, federal Indian law and tribal law, that are not currently integrated into Michigan Law School's curriculum. To this end, NALSA hosts symposia on topics in federal Indian law and tribal law, thus highlighting and exposing non-natives to the multifaceted dimensions of Indian law and the unique life

2. Tribal affiliations of NALSA members include and have included the following different tribes: the Blackfoot Nation, the Cayuga Nation, the Cherokee Nation of Oklahoma, the Chumash, the Delaware Tribe, the Eastern Band of Cherokee Indians, the Forest County Potawatomi Community of Wisconsin, the Grand Traverse Band of Ottawa and Chippewa, the Keewenah Bay Indian Community, the Little Traverse Bay Band of Odawa Indians, the Mashantucket Pequot Tribal Nation, the Menominee Indian Tribe of Wisconsin, the Miami of Indiana, the Mohawk Nation, the Navajo Nation, the Passamaquoddy Tribe, the Saginaw Chippewa Indian Tribe of Michigan, the Sault Ste. Marie Tribe of Chippewa, the Tlingit, the Tuscarora Nation and the Winnebago Tribe of Nebraska.

experiences of Native Americans. NALSA also organizes community-focused events and service projects that raise awareness of Native American issues, such as an annual clothing drive for various reservations, an annual American Indian Law Day, and co-sponsors the largest student run Pow Wow in the nation.

APALSA serves as an academic, social and political resource not only for Asian American students, but for the entire Law School. As one of the largest student organizations on campus, APALSA has made itself increasingly visible to the Michigan Law School administration through its involvement in student recruiting and faculty hiring. Through its speaker series, APALSA addresses important legal issues that have a unique impact on the Asian American community, including the representation of 9/11 detainees, hate crimes and the legacy of *Korematsu v. United States*, 323 U.S. 214 (1944). APALSA also sponsors social events throughout the year to encourage the entire Law School community to enjoy the benefits of diversity in nonacademic contexts and to better understand legal issues concerning the Asian American community. Although Asian American status is not explicitly included in the critical mass aspect of the Law School's admissions policy, APALSA believes the policy offers irreplaceable benefits to the Law School community. Included within these benefits is the creation of a minority support system helping Asian American students, among others, to participate effectively in the Law School community.

* * * * *

Submitted by this coalition of four distinct organizations, this brief itself symbolizes the value of meaningful diversity in higher education. By crafting a unified voice out of many

unique perspectives, the sum of which is greater than its parts, we bring to life the theories of racial diversity to which Michigan Law School subscribes. Like this brief, our law school experience would not be complete without a meaningful exchange of ideas among a racially diverse group of students.

SUMMARY OF ARGUMENT

Race has been a salient social force throughout our nation's history and, despite progress, remains so today. Persons of color speak from experience framed by race, and by its invidious underside, racism. Through this frame of reference, the presence of racial minorities in a classroom gives life to voices informed by firsthand and collective experiences often unknown to students from the majority – voices that Michigan Law School has recognized will contribute to the "robust exchange of ideas." *Regents of the Univ. of Cal. v. Bakke*, 438 U.S. 265, 312 (1978).

The law is inextricably woven into the social, political and economic fabric of our nation, and race pervades the law in ways both subtle and obvious. Without a diverse student body contributing to discussion and debate in classrooms, in extracurricular activities so important to the essence of a law school (*e.g.*, law reviews, moot courts and clinics) and in informal interactions among students who live and study together, the Michigan Law School community would lose the vital voices of students of color who raise unique perspectives. As recognized by Justice Powell in *Bakke* and by Michigan Law School today, racial diversity is an essential component of legal education.

To achieve the quality legal education that contributes to Michigan Law School's impressive reputation, the Law School administration strives to attain a critical mass of minority students, including members of our groups, whose presence serves to ensure that Michigan Law School's students do not learn the law "in an academic vacuum, removed from the interplay of ideas and the exchange of views with which the law is concerned." *Sweatt v. Painter*, 339 U.S. 629, 634 (1950).

ARGUMENT

1. Race-Based Life Experiences Provide An Inherently Unique Perspective

Our nation has made great strides to rid itself of its "separate but equal" vestiges. The reality, however, is that in the United States today a person's race continues to shape life experiences. As a result, minority law students understand and experience the impact of various aspects of the law in ways different than the majority, and one develops a more informed legal education through exposure to these perspectives. While all students come to Michigan Law School with their own personal histories and experiences, students of color add necessary and unique points of view.

Speaking of the similar benefits of a diverse judiciary, Judge Harry T. Edwards eloquently remarked:

> [There are cases] in which black judges may sometimes bring a unique vision to the judicial deliberative process. Because of the long history of racial discrimination and segregation in American society, it is safe to assume that a

> disproportionate number of blacks grow up with a heightened awareness of the problems that pertain to these areas of the law. Of course, not all blacks have the same exposure to these problems. . . . And not all blacks share the same views on the solutions to the problems. But, just as most of my Jewish colleagues have more than a fleeting understanding of anti-Semitism, the Holocaust, and issues surrounding Israel and Palestine, most blacks have more than a fleeting understanding of the effects of racial discrimination.

Harry T. Edwards, *Race and the Judiciary*, 20 Yale L. & Pol'y Rev. 325, 328 (2002). As Judge Edwards points out, although "[t]here is no good reason for all black legal scholars or judges to think alike on all issues," being black in America "connotes something" and these racial differences "should be given voice in our judicial deliberations."[3] *Id.* at 327, 329. For these same reasons, these voices should be heard in the Law School.[4]

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3. As does Judge Edwards, Michigan Law School recognizes that not all people of a particular race will have the same experiences or share the same points of view. *See Grutter v. Bollinger*, 288 F.3d 732, 791 (6th Cir.) (Boggs, J. dissenting), *cert. granted*, 123 S. Ct. 617 (2002). Michigan Law School's admissions policy recognizes that underrepresented minority applicants are "particularly likely" to have had a wide range of experiences that enrich the dialogue of the Law School student body. This is not markedly different than recognizing the probability that an Olympic athlete or a student with a Ph.D. in physics is "particularly likely" to bring to the Law School a unique perspective.

4. Michigan Law School has recognized that this robust exchange of ideas is fundamental to its educational mission. Even if

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2. Meaningful Racial Diversity Contributes To The Robust Exchange of Ideas In The Law School Community

Meaningful racial diversity at Michigan Law School dramatically and positively influences the educational experience of all students.[5] *See* Rachel F. Moran, *Diversity and Its Discontents: The End of Affirmative Action at Boalt Hall*, 88 Cal. L. Rev. 2241, 2263-64 (2000) (studies show overall benefits of attending diverse schools); Richard

(Cont'd)
one disagrees with the goals of racial diversity, Michigan Law School should be given sufficient deference to create the atmosphere it believes will contribute most to a preeminent legal education. Courts "are ill-equipped to ascertain which race-neutral alternatives merit which degree of consideration or which alternatives will allow an institution such as [Michigan] Law School to assemble both a highly qualified and richly diverse academic class." *See Grutter*, 288 F.3d at 751 (citing *Regents of the Univ. of Mich. v. Ewing*, 474 U.S. 214, 226 (1985) (courts are ill-suited "to evaluate the substance of the multitude of academic decisions that are made daily by faculty members of public education institutions")).

5. Law students overwhelmingly agree that racial diversity in the classroom and on campus stimulates individual critical examination of core beliefs and enhances the quality of the educational experience. *See* Gary Orfield & Dean Whitla, *Diversity and Legal Education: Student Experiences in Leading Law Schools, in Diversity Challenged* (Gary Orfield & Michael Kurlaender eds., 2001). Nearly two-thirds of the students surveyed at Michigan Law School and at Harvard Law School reported that the debate, discussion and analysis in their classes benefitted from diverse points of view provided by a diverse student body, and 91 percent of Michigan Law School's students reported that diversity was a positive element in their educational experience. *Id.*

Lempert, David Chambers & Terry Adams, *Diversity in Practice: Myths and Facts About Affirmative Action*, 38 Ariz. Att'y 27 (2001). As Justice Powell acknowledged in *Bakke*, "In order to get beyond racism, we must first take account of race." 438 U.S. at 407. Michigan Law School properly fosters an environment in which racially diverse students can interact and engage each other within and without the classroom. These interactions substantially contribute to the robust exchange of ideas.

A. Meaningful Racial Diversity Is An Integral Component Of Classroom Dialogue

Students of color contribute to the dynamic in the classroom by introducing ideas that may otherwise be overlooked in the typical law school curriculum. First-year courses at most law schools rely upon teaching a core group of seminal cases through the Socratic method, thus encouraging a particular critical and reflective manner of legal thinking. This pedagogy allows students to challenge not only their professor, but one another as well. Students of color add to this dialogue by introducing critical points of view and observations that might otherwise be missed, thus revealing the depth and scope of these debates.

A person's race gives rise to various life experiences directly relevant to the process of legal debate and critical thinking that takes place in the law-school classroom. Indeed, a wide range of everyday occurrences exemplify this point: A Black man who vigorously attempts to hail empty taxis as they pass him by; a Latina attorney who walks into a conference room and she is presumed by others present to be a secretary; a Black businessman who enters the lounge of an exclusive country club and sees all eyes turn

immediately to him; a Native American man who is pulled over by state police for a DUI check as soon as he drives off the reservation. The list goes on.[6] *See, e.g.*, Ian Ayres, *Fair Driving: Gender and Race Discrimination in Retail Car Negotiations*, 104 Harv. L. Rev. 817, 819 (1991) (noting that "tests reveal that white males receive significantly better prices than blacks and women" despite the fact that testers of different races and sexes entered new car dealerships separately and bargained using uniform negotiating strategies).

Even where racial implications are obvious, classroom discussions will be superficial without a meaningful presence of students of color. As minority students, we are particularly likely to analyze issues from a distinct perspective, and are uniquely able to raise subtle points informed by race because we are likely to have a heightened awareness shaped by personal experience. *See* Edwards, *supra*, at 328; *see also* Matthew L.M. Fletcher, *Listen*, 3 Mich J. Race & L. 523 (1998).

Racial status affects life experience in many ways that directly and indirectly manifest themselves in legal discourse. Thus, a student body that includes a meaningful number of students of color draws attention to racial issues underlying many first year cases that appear deceptively race-neutral.

6. In other words, racial discrimination occurs regardless of socioeconomic status, professional status or educational background. Nothing in the Constitution compels admissions officers at America's elite graduate schools to serve as a bastion of forged color blindness while the real world remains, in so many ways, fully cognizant of skin color. To say the least, it is inaccurate to equate the experience of being a minority with a characteristic as plainly irrelevant to the study of the law as having type A-positive blood. *Cf. Hopwood v. Texas*, 78 F.3d 932, 945 (5th Cir. 1996).

Several of the cases taught in the first year curriculum directly address race, but many more do so in subtle ways that will be further exposed and developed in a racially diverse atmosphere. While *Shelley v. Kramer*, 334 U.S. 1 (1948) (addressing racially discriminatory property covenants), overtly discusses race, other cases implicate racially significant topics in subtle ways that are better explored in a racially diverse classroom. For example, the opinion in *Williams v. Walker-Thomas Furniture Co.*, 350 F.2d 445 (D.C. Cir. 1965) (finding that a contract for the purchase of furniture may be held unenforceable on grounds of unconscionability), never identifies the race of the plaintiff. A minority law student will more likely appreciate, and can share with her classmates, the way that such contracts of adhesion peculiarly affect America's minority communities. Further, all students become more attuned to negotiating dynamics when a minority student shares an experience in which discrimination provided a non-economic motivation in a bargaining situation.

Students of color contribute to classroom discussion in other abundant and profound ways. The exchange of ideas in a constitutional law classroom will also be more robust when Asian American students can discuss the treatment of their own communities during the Second World War. Discussions of search and seizure law, racial profiling, and self defense in *People v. Goetz*, 497 N.E.2d 41 (N.Y. 1986), in criminal law class will inevitably be made more dynamic through the input of African-American and other minority students. *See, e.g.*, Devon W. Carbado, *(E)racing the Fourth Amendment*, 100 Mich. L. Rev. 946, 953-964 (2002); Jo Ann L. Asquith & Dennis N. Bristow, *To Catch a Thief: A Pedagogical Study of Retail Shopping*, J. Educ. for Bus., May 1, 2000, at 271276. A discussion of this Court's opinion

in *Johnson v. M'Intosh*, 21 U.S. (8 Wheat.) 543 (1823), which applied the doctrine of discovery in a way that to this day affects Native American property rights, is no doubt improved by a Native American student who can offer a perspective informed by firsthand experience, whatever her point of view. *See, e.g.*, Fletcher, *supra*, at 528 (describing the absence of debate during classroom discussion of *Johnson*). When one of our members who has personally experienced school busing as part of desegregation efforts speaks about the topic in class, students who think busing was a thing of the past directly learn from these experiences. *See* Moran, *supra*, at 2266 ("[Eighty percent] [of law students] reported that discussions with students from different racial or ethnic backgrounds had changed their beliefs about the criminal justice system, conflicts over individual rights, social and economic institutions, and civil rights.").

B. Meaningful Racial Diversity Is An Integral Component Of Legal Education Beyond the Classroom

Learning does not end once students leave the classroom.[7] A quality legal education has come to include participation in law reviews and journals, moot courts and clinics. Outside the classroom, students are also able to inspire critical thinking among their peers through constant contact with each other during debates, study sessions, participation in extracurricular activities and social interaction. The values we celebrate as the organized students of color – vibrant dialogue, community service, social and

7. "You send your child to the schoolmaster, but 'tis the schoolboys who educate him." Ralph Waldo Emerson, *The Conduct of Life* (1860), *available at* http://www.xmission.com/~seldon/74/emerson/conduct.html.

academic achievement – are thus successfully shared with our non-minority counterparts.[8]

Participation by students of color in our organizations and other student organizations and journals provides a key source of cultural and racial interaction. Through such integrated interaction, students who have formerly led fairly segregated lives are naturally challenged to reconsider their points of view and preconceived notions. In these settings, students "build important social relationships across boundaries of race, ethnicity and class." Moran, *supra*, at 2307. These interactions provide opportunities for students who have not previously been exposed to racially diverse environments to develop these important relationships. *See id.*[9]

As members of law school organizations, we influence the programs and activities sponsored by our groups. We educate the university community through symposia and panel discussions on issues such as the death penalty, environmental justice, tribal courts, hate crimes, post 9/11 immigration issues and racial profiling, as well as through events such as the annual American Indian Law Day, which highlights current tribal and federal Indian law issues facing Indian tribes. *See e.g.*, BLSA Schedule of Events, *available at* http://

8. "Student organizations sometimes devote themselves to topics, such as the problems of the poor and disadvantaged, that form a peripheral part of the core curriculum. . . . Other activities focus on moving beyond the classroom to serve clients or the community." Rachel F. Moran, *Diversity and Its Discontents: The End of Affirmative Action at Boalt Hall*, 88 Cal. L. Rev. 2241, at 2338; *see also* David L. Chambers & Cynthia F. Adcock, *Learning and Serving: Pro Bono Legal Services by Law Students*, 79 Mich. B.J. 1056 (2000).

9. *See also* Orfield & Whitla, *supra*, at 66.

www.umich.edu/~blsa/1.0/events.html; *Program Focuses on Native American Empowerment, Development*, Univ. Rec., Apr. 12, 1993, *available at* http://www.umich.edu/~urecord/9293/Apr12_93/10.htm.

Our meaningful participation as students of color enhances informal interactions by creating organizations, journals and informal discussion groups that energize other students and the larger community to discuss issues that are not otherwise the primary focus in the Michigan Law School curriculum. For example, a diverse group of students at Michigan Law School began a critical race theory reading group, which resulted in the creation of the student-led Michigan Journal of Race and Law in 1995. *See* Mich. J. Race & Law homepage, *available at* http://students.law.umich.edu/mjrl/index.htm.

Michigan Law School benefits from extensive participation by minority students in student and faculty recruitment, and in the ongoing process of developing a relevant, thoughtful curriculum. We support the admissions office by hosting prospective students and recruiting students at admissions fairs. Our organizations also provide input throughout the faculty recruitment process. Each organization's faculty-hiring committee regularly participates in job panel discussions and hosts and attends receptions for prospective and current faculty. We also influence the hiring of visiting professors and encourage Michigan Law School to offer classes like Critical Race Theory, Federal Indian Law and Asian Americans and the Law. *See* Univ. of Mich. L. Sch. Course Descriptions, *available at* http://cgi2.www.law.umich.edu//_Class Schedule/CourseList.asp.

The stark reality is that in our nation today, despite great strides in the area of civil rights and racial equality, the color

of a person's skin still shapes that person's life experiences in a manner relevant to the ideas and debates at the core of the law school experience. *See generally* Cornel West, *Race Matters*, at 1-8 (1993). Michigan Law School has recognized that minorities are "particularly likely" to have experiences that uniquely contribute to the "robust exchange of ideas" inside the classroom and throughout the Michigan Law School community. If denied the ability to consider race as part of its admissions process, Michigan Law School will effectively be denied the tremendous benefits described above that come from meaningful racial diversity in the student body.

3. Meaningful Racial Diversity Requires A Meaningful Presence Within Michigan Law School

The benefits gained from a racially and ethnically diverse student body cannot be achieved unless students of color are a meaningful presence within Michigan Law School.[10] Critical mass is the embodiment of this meaningful presence. As Justice Powell recognized in endorsing the Harvard plan in *Bakke*, a university cannot provide "a truly [heterogeneous] environment . . . without some attention to numbers." *Bakke*, 438 U.S. at 323 (alteration in original).

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10. [I]f the goals that a university is seeking to serve are the educational goals of improving teaching and learning, enhancing civic values, or improving professional development among its students, then the appropriate levels of diversity are tied to the levels necessary to achieve those goals by promoting discussions and interactions among students of different races.

Scott R. Palmer, *Diversity and Affirmative Action: Evolving Principles and Continuing Legal Battles, in Diversity Challenged* 66 (Gary Orfield & Michael Kurlaender eds., 2001).

A. A Meaningful Presence Of Minority Students Is Necessary To Facilitate Meaningful Diversity And The Robust Exchange Of Ideas

Michigan Law School seeks to enroll approximately 350 students per class year, and divides each class into four sections. As a result, even under the present admissions policy, in sections of about 90 students there are typically only between nine and fifteen students of color per section, with the precise numbers varying year-to-year.[11] Ensuring this representation of minority students is an essential element in creating a vibrant discourse of diverse ideas. Without a meaningful presence, minority students will be burdened with the adverse effects of racial isolation, alienation and stereotyping. *Grutter*, 288 F.3d at 747 (Michigan Law School policy seeks to ensure that "minority students do not feel isolated or like spokespersons for their race, and feel comfortable discussing issues freely based on their personal experiences.").

In contrast, at Michigan Law School, when we bring to the classroom our varied experiences and lend our unique perspectives to the academic discourse, we do so confident that if we articulate our "race-informed" perspectives we will not feel that we are "breaking new ground," injecting an unwelcome perspective or presenting a "radical" view. Studies show that increasing the number of minority students, *e.g.*, achieving a critical mass, increases the participation of individual minority students. *See* Elizabeth Mertz et al., *What Difference Does Difference Make? The Challenge for Legal Education*, 48 J. Legal Educ. 1, 42-45 (1998). Moreover,

11. Not only does the total number of students of color vary from year to year, but the number of students of each particular race varies as well.

a meaningful presence mitigates the fear of stereotyping that occurs when one of us is thrust into representing the voice of an entire racial group. This stereotyping places an inordinate pressure on an isolated minority when speaking in class for fear that if he or she is misunderstood, or speaks in error, it may be viewed as reflecting poorly on his or her race. *See Grutter*, 288 F.3d at 747 (critical mass mitigates pressure of becoming the "spokesperson[]" for a race).

By bringing a meaningful presence of minority students to the classroom, Michigan Law School's policy rejects the pernicious stereotype that all people of the same race think alike. *See, e.g.*, Edwards, *supra*, at 327-28. Exposing all students to a critical mass of minority students will increase the likelihood that all of these divergent points of view will be expressed and appreciated. A meaningful presence makes it possible for us to voice those diverse views.

Besides benefiting all students at Michigan Law School, a meaningful presence of racial minority students vitiates stigmatizing stereotypes imposed on students of color. First, some opponents of Michigan Law School's admissions policy subscribe to the incorrect notion that minority students are not qualified to attend the Law School. With a critical mass of students of color, however, there is greater interaction between students of different backgrounds, races and ethnicities, in both formal and informal settings, through which all students better appreciate and understand each other's qualities, capabilities and points of view. This interaction undermines the basis for questioning the qualifications of students of color.[12]

12. Because Michigan Law School's admissions policy considers applicants holistically, Michigan Law School has

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Second, some opponents of Michigan Law School's admissions policy incorrectly ascribe to some minority students the concern that the minority students themselves feel that they do not belong, or that they question their own qualifications. Although we cannot control the perceptions of others, we do not feel stigmatized. By virtue of a critical mass of students of color, our active participation within our own respective communities and the larger university community demonstrates the degrees to which we feel we belong, and therefore allows any students with lingering concerns to overcome their doubts. *See supra* Part 2.B. The benefits of greater interracial interaction is the most potent antidote to, and plainly outweighs the harm of, any stigma attached to students of color who have been admitted to Michigan Law School.

B. Without A Meaningful Presence Of Minority Students, The Michigan Law School Experience Will Irreparably Suffer

Increased campus diversity leads to increased interracial interactions. Scott R. Palmer, *A Policy Framework for Reconceptualizing the Legal Debate Concerning Affirmative Action in Higher Education*, *in* Diversity Challenged 66 (Gary Orfield & Michael Kurlaender eds., 2001). Exposure to persons of different backgrounds and races contributes to

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recognized that being "qualified" is not dependent solely on numerical factors, such as LSAT scores or grades. In order to build a law school class that can better assure a free and diverse exchange of thoughts, Michigan Law School properly accounts for the personal histories and experiences that minority students bring to Michigan Law School community. There is no dispute, in the record or otherwise, that all admitted students are qualified to be at Michigan Law School.

the exploration of the proper role and content of the law. It further provides an opportunity to many students who have not lived or studied in a significantly diverse environment to gain these experiences for the first time. This exposure is a necessary component of a legal education that is expected to prepare students for the globalization of legal practice. The opportunities for interactions between minority and white students, and the benefits to the Law School community in general that result from meaningful racial diversity, *see* Part II *supra*, can only be accomplished if a meaningful number – a critical mass – of students of color is enrolled at Michigan Law School.

Without a meaningful presence of students of color, the ability of our organizations, BLSA, LLSA, NALSA and APALSA, and other student organizations to function or even exist will be in doubt. *See* York J. Chang, *True Convictions: A Post-209 Eyewitness Account of UCLA Law*, 20 Chicano-Latino L. Rev. 43, 44 (1999) (observing that at UCLA "the very existence of student-of-color organizations with great importance and relevance for their respective communities (the Chicano-Latino Law Review and the Black Law Student Association) hang on to a tenuous, threadbare existence"). Thought-provoking conversations that typically begin with minority law students are likely never to occur. Moreover, the *Amici* and other minority students will not be able to accomplish the tangible benefits discussed previously. We, the students best poised to reach out to minority recruits, cannot sustain our current efforts without our current numbers. Indeed, if minority students are largely absent from the campus, Michigan Law School's future efforts to attract a diverse student body will founder.

Without affording the nation's elite law schools the option of considering race as a factor in admissions, legal outreach programs and recruiting efforts will also be diminished. Student-run symposia and other similar activities will be devoid of meaningful input from a racially diverse group of students. Minority student participation in clinics will wither. Minority student participation in many law journals, particularly those that focus on race-related issues, will suffer the same fate. This Court should not require a system whereby the most selective law schools – the schools that open the door widest to the most prestigious jobs, professorships and judicial clerkships – effectively shut their doors to qualified minority students.

CONCLUSION

For the foregoing reasons, the decision of the Sixth Circuit Court of Appeals below should be affirmed.

Respectfully submitted,

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